# National Labor Relations Board



# Weekly Summary of NLRB Cases

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Press Release (<u>R-2575</u>): Joseph Frankl is Named Assistant General Counsel in NLRB's Division of Operations-Management

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Land-O-Sun Dairies d/b/a Pet Dairy (10-CA-35522; 345 NLRB No. 101) Kingsport, TN Oct. 28, 2005. The Board affirmed the administrative law judge's conclusion that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide Teamsters Local 549 with requested information (pay records of certain route salesmen), which was relevant and necessary to the Union as the collective-bargaining representative of the Respondent's production, distribution, maintenance, and clerical employees. [HTML] [PDF]

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Teamsters Local 549; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Kingsport on June 29, 2005. Adm. Law Judge George Carson II issued his decision Aug. 10, 2005.

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Integrated Electrical Services, Inc., d/b/a Primo Electric (5-CA-31829; 345 NLRB No. 99) Glen Burnie, MD Oct. 24, 2005. The Board agreed with the administrative law judge's finding that the Respondent violated Section 8(a)(3) and (1) of the Act by terminating the employment of master electrician William Hughes on October 10, 2003, because he engaged in protected union activities. Chairman Battista concurred in the result, but with a different rationale. [HTML] [PDF]

Applying a *Wright Line* analysis, the judge found that the General Counsel showed that Hughes' protected activity was a motivating factor in the Respondent's decision to discharge him. He found that the Respondent's alleged nondiscriminatory reasons for discharging Hughes were pretextual and that the Respondent would not have discharged Hughes in the absence of his protected activity. In this regard, the judge concluded that human relations director, Perini, did not have a good faith belief that Hughes had engaged in misconduct. Citing *NLRB v. Burnup & Sims*, 379 U.S. 21, 23 (1964), and *Keco Industries*, 306 NLRB 15, 17 (1992), the judge alternatively found that even if Perini did have such a good-faith belief, Hughes' discharge would be unlawful because he was engaged in protected activity and did not engage in misconduct.

Members Liebman and Schaumber found that, in light of the judge's initial finding that Perini did not have a good faith belief that Hughes had engaged in misconduct, *Burnup & Sims* and its progeny do not apply to the facts here.

Chairman Battista observed that although the Respondent's reasons for Hughes' discharge were the distribution of a prounion CD and the alleged lying about it, the issue is not motive but whether Hughes engaged in misconduct during the course of that union activity, i.e., whether the distribution was on work time. He found that the *Wright Line* test for determining motive is unnecessary and that instead the issues are (1) whether the Respondent had a goodfaith belief that Hughes engaged in the misconduct and (2) if Respondent had such a belief, whether Hughes in fact engaged in the misconduct. Chairman Battista concluded that the Respondent did not show that it had a good-faith belief that Hughes engaged in misconduct.

Member Schaumber agreed that the General Counsel established a prima facie case of discrimination under *Wright Line* and found it unnecessary to rely on the September 2, 2003 OSHA complaint as evidence of Respondent's antiunion animus.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Electrical Workers IBEW Local 24; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Baltimore, Sept. 28-29, 2004. Adm. Law Judge Eric M. Fine issued his decision Feb. 10, 2005.

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United States Postal Service and National Rural Letter Carriers' Assn. (28-CA-19175(P), 19618(P), and 28-CB-6075(P); 345 NLRB No. 100) Scottsdale, AZ Oct. 25, 2005. In affirming the administrative law judge, the Board held that the Respondent Postal Service violated Section 8(a)(1) of the Act and Respondent National Rural Letter Carriers violated Section 8(b)(1)(A) and 8(b)(2) by maintaining in a document entitled "National Guidelines for the Quality of Work Life/Employee Involvement Process" a clause requiring that an employee selected for the position of rural letter carrier academy instructor be a member of the Respondent Union. [HTML] [PDF]

Further, the Board affirmed the judge's finding that the Respondent Postal Service violated Section 8(a)(1) by interrogating and threatening its employees, and informing them that they could reapply for a position as an instructor if they rejoined the Union and that they must be members of the Union in order to be selected for, or retain, the instructor position. The Board also agreed with the judge that the matter of assignment to the instructor position is a term of employment so that the Respondents' discrimination of Kathy O'Toole and Jeffrey Houlter regarding assignment to the instructor position violated Section 8(a)(3) and 8(b)(2).

Affirming the judge's recommendation, the Board required that the Respondent offer O'Toole reinstatement to the instructor position and offer Houlter appointment to the instructor position. It did not affirm the judge's recommended Order to the extent that it provided a reinstatement-appointment remedy for any other employees (other than O'Toole) at the Kachina station who were removed from the instructor position because they were not union members and rejected the General Counsel's request that the recommended order be modified to provide a nationwide reinstatement-appointment remedy.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Kathy O'Toole, an individual; complaint alleged violation of Section 8(a)(1), (3), and (4) and Section 8(b)(1)(A) and 8(b)(2). Hearing at Phoenix, Sept. 28-30 and Nov. 15-16, 2004. Adm. Law Judge Gregory Z. Meyerson issued his decision Feb. 17, 2005.

#### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Community Renewal Team, Inc. (Autoworkers Local 376) Hartford, CT Oct. 24, 2005. 34-CA-10991; JD(NY)-46-05, Judge Steven Fish.

*Boehringer Ingelheim Vetmedica, Inc.* (Food & Commercial Workers Local Two) St. Joseph, MO Oct. 21, 2005. 17-CA-22964; JD(SF)-73-05, Judge Gregroy Z. Meyerson.

Fresh Direct, LLC and UTF Trucking, Inc. (Teamsters Local 810) Long Island City, NY Oct. 26, 2005. 29-CA-26684; JD(NY)-47-05, Judge Eleanor MacDonald.

Surgener Electric, Inc. d/b/a McKee Electric Co. (Electrical Workers [IBEW] Local 428) Bakersfield, CA Oct. 19, 2005. 31-CA-27113; JD(SF)-71-05, Judge James L. Rose.

Southern California Gas Co. (John Lewis of Chemical Workers Locals 47C, 78C, 350C, and 995C, UFCW) Los Angeles, CA Oct. 20, 2005. 21-CA-36590, 36603; JD(SF)-70-05, Judge Joseph Gontram.

*Wal-Mart Stores, Inc.* (Food & Commercial Workers) Wasilla, AK Oct. 25, 2005. 19-CA-27720; JD(SF)-74-05, Judge Burton Litvack.

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### LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

#### DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Petland Discounts, Inc., Brentwood, NY, 29-RC-11084, Oct. 26, 2005 (Chairman Battista and Members Liebman and Schaumber)

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(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

#### DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Coach USA, Chicago, Chicago, IL, 13-RC-21352, Oct. 24, 2005 (Chairman Battista and Members Liebman and Schaumber)

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# (In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

- Carroll College, Inc., Waukesha, WI, 30-RC-6594, Oct. 26, 2005 (Chairman Battista and Members Liebman and Schaumber)
- *Madison Center, Inc.*, Wakesha, IN, 25-RC-10299, Oct. 26, 2005 (Chairman Battista and Members Liebman and Schaumber)
- Sears, Roebuck & Co., Ann Arbor, MI, 7-RC-22912, Oct. 26, 2005 (Chairman Battista and Members Liebman and Schaumber)
- Saks Fifth Avenue, New York, NY, 2-UD-352, Oct. 26, 2005 (Chairman Battista and Members Liebman and Schaumber)
- Westbrook Health Services Inc., Parkersburg, WV, 6-RD-1568, Oct. 26, 2005 (Chairman Battista and Members Liebman and Schaumber)

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#### Miscellaneous Board Orders

# CERTIFICATION OF REPRESENTATIVE AS BONA FIDE UNDER SECTION 7(B) OF THE FAIR LABOR STANDARDS ACT OF 1938

- City of Clear Lake, Cleark Lake, MN, 18-WH-13, Oct. 25, 2005 (Chairman Battista and Members Liebman and Schaumber)
- Sherburne County Sheriff's Department, Elk River, IA, 18-WH-12, Oct. 25, 2005 (Chairman Battista and Members Liebman and Schaumber)

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